

<sup>5</sup> See 47 U.S.C. § 339(a)(2)(D)(viii), as amended by Section 204 of SHVERA. The statute provided that a subscriber could request such a test beginning April 30, 2006, if such local network station is within the top 100 television markets and has received a tentative channel designation on its allotted digital channel or has lost interference protection; or, beginning July 15, 2007, for any other full power local network station. See 47 U.S.C. § 339(a)(2)(D)(vii), as amended by Section 204 of SHVERA.

3. By Order adopted April 28, 2006,<sup>6</sup> the Media Bureau granted six-month digital testing waivers for 23 stations, finding that their digital signal coverage was limited due to the need for international coordination or approvals, clear zoning or environmental legal impediments, or force majeure. Fifteen stations which received a testing waiver filed for a six-month extension. By Order adopted October 30, 2006,<sup>7</sup> the Media Bureau granted an additional six-month extension of all of these stations. It also stated that if further extensions are needed, such requests must be filed by February 28, 2007, with oppositions filed with the Commission and served on the relevant parties by March 15, 2007 and replies no later than March 26, 2007.<sup>8</sup>

4. Nine permittees or licensees have requested further extension of the testing waivers granted on April 30, 2006, and all of these requests are unopposed. We have carefully considered each digital testing waiver extension request, as directed by Congress. As before, we have considered all of the facts presented by the parties, as well as station filings and information contained in the Commission's Consolidated Database System, which are available to the public. We hereby grant all nine requests for six-month extensions for the reasons set forth below. Again, we emphasize that denial of a waiver request will not automatically result in the delivery of a distant digital signal to a subscriber, but merely permits a subscriber to request a digital signal test.<sup>9</sup> If further waiver extensions are needed, and in order to ensure action before the October 31, 2007 expiration date of the waiver extensions granted herein, permittees and licensees must file any further extension requests by August 15, 2007. Any oppositions to such further extensions should be filed with the Commission and served on the relevant parties by August 24, 2007, and any replies to such oppositions should be filed and served no later than August 31, 2007.

5. **Need for International Coordination or Approvals.** Section 339(a)(2)(D)(viii)(I) of the Act acknowledges that a station's digital signal coverage may be limited due to the need for international coordination or approval of applications for a new or modified digital construction permit. The Bureau initially granted ten waiver requests under this criteria, and four of these stations have filed for an extension; Telefutura Los Angeles LLC ("Telefutura"), the permittee of KFTR-DT (TEL), Ontario, California; KVOA Communications, Inc. ("KVOA"), the permittee of KVOA-DT (NBC), Tucson, Arizona; Winston Broadcasting Network, Inc. ("Winston"), the permittee of WBNX-TV (CW), Akron, Ohio; and WSMH Licensee LLC ("WSMH"), the permittee of WSMH-DT (FOX), Flint, Michigan. Telefutura, KVOA, and WSMH state that they are unable to complete construction of their authorized DTV facilities because international coordination is still on-going. Winston states that Industry Canada has approved the proposed digital facilities for WBNX-DT, and the Commission granted its pending application for a digital construction permit on April 21, 2006. Winston further states that it is in the process of constructing its digital facilities and hopes to complete construction in April 2007, thereby mooted its extension request. With respect to these four stations, their applications for DTV construction permits are either awaiting approval by the Canadian or Mexican governments, or were granted within the last 18 months. Accordingly, we grant a six-month extension of the digital testing waivers for KFTR-DT, KVOA-DT, WSMH-DT, and WBNX-DT.

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<sup>6</sup> *In the Matter of Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 21 FCC Rcd 4813 (MB 2006) ("Digital Testing Waiver Order").

<sup>7</sup> *In the Matter of Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 21 FCC Rcd 12894 (MB 2006) ("Digital Testing Waiver Extension Order"). The Bureau subsequently extended the deadlines for the filing of oppositions and responses to March 30 and April 6, 2007, respectively. *Public Notice, Procedures for Filing Oppositions and Responses Regarding Requests for Digital Testing Waivers Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, DA 07-1309 (released March 15, 2007).

<sup>8</sup> *Digital Testing Waiver Extension Order*, 21 FCC Rcd at 12895.

<sup>9</sup> *See Digital Testing Waiver Order*, 21 FCC Rcd at 4815.

6. **Zoning or Environmental Legal Impediments.** Section 339(a)(2)(d)(vii)(II) of the Act permits a waiver based upon a showing that the station's digital signal coverage is limited because of the "unremediable" presence of "clear zoning or environmental legal impediments." The Bureau initially granted ten waiver requests under this criterion, and three of these stations have filed for a six-month extension.

7. Smith Media License Holdings, LLC, the permittee of WFFF-DT (FOX), Burlington, Vermont, is a member of a coalition of television stations which propose to co-locate their DTV facilities on top of Mt. Mansfield in Vermont. The coalition received zoning approval from the State of Vermont in late spring 2005, the new tower has been constructed and most of the coalition stations have been installed on the tower. Smith states that its station will be fully constructed by July 13, 2007. In view of the forgoing, we grant a six-month extension of the digital testing waiver for WFFF-DT.

8. Raycom National, Inc. ("Raycom"), the permittee of stations KHNL-DT (NBC), Honolulu, Hawaii and KOGG-DT (NBC), Wailuku, Hawaii, also request extensions based on zoning and environmental impediments. With respect to KHNL-DT,<sup>10</sup> the Honolulu City Council passed an ordinance in the 1980's banning construction of any new television and radio towers. KHNL-DT is currently operating at reduced facilities. While Raycom has located an existing site to construct its maximized DTV facilities for KHNL-DT, it cannot construct its maximized facility until an existing analog antenna is removed at the end of the DTV transition. With respect to KOGG-DT, Raycom reported in its first extension request that it had entered into an agreement for an acceptable site for its digital facilities, and filed the required applications for the right to subdivide the property. Raycom has since filed a minor modification application to move to the new site, which is still pending.<sup>11</sup> Because these stations' digital signals are limited due to clear zoning impediments, we grant a six-month extension of the digital testing waivers for KHNL-DT and KOGG-DT.

9. **Force Majeure.** SHVERA further provides that a waiver request may be granted when the station's digital signal coverage is limited due to force majeure.<sup>12</sup> Force majeure is defined as "an unexpected and disruptive event which may operate to excuse a party from a contract."<sup>13</sup> The Media Bureau initially granted four waiver requests under this criterion, and two of these stations have filed for an additional six-month extension.

10. The DTV transmitter of NBC Telemundo License Co., the permittee of WNBC-DT (NBC), New York, New York, was located on the World Trade Center, which was destroyed in the terrorist attack on September 11, 2001. The Freedom Tower, which is to be built at the site of the destroyed World Trade Center, has not yet been constructed. The terrorist attack in 2001 clearly constitutes force majeure and justifies grant of a six-month extension of the digital testing waiver for WNBC-DT.

11. The analog and digital facilities of New Orleans Hearst-Argyle Television Inc. ("Hearst-Argyle"), the permittee of WDSU-DT (NBC), New Orleans, Louisiana, were destroyed by Hurricane Katrina in September 2005. Hearst-Argyle recently restored its analog signal to the air, but remains unable to construct its digital facilities. Hurricane Katrina clearly constitutes force majeure and justifies the grant of a six-month extension of the digital testing waiver for WDSU-DT.

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<sup>10</sup> *Id.* at 4819-20.

<sup>11</sup> File No. BMPCDT-20061206AAH.

<sup>12</sup> See 47 U.S.C. § 339(a)(2)(D)(viii)(III).

<sup>13</sup> *Webster's Encyclopedic Unabridged Dictionary of the English Language* at 554 (1989). Force majeure is broader than "act of God," which is limited to natural forces. *Id.*

12. ACCORDINGLY, IT IS ORDERED that the requests for waiver extension from the nine television stations as described herein ARE GRANTED and the first permissible date for digital testing for these stations IS EXTENDED six months, from April 30, 2007 to October 31, 2007. Any further waiver extension requests must follow the pleading schedule set forth above.

FEDERAL COMMUNICATIONS COMMISSION

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